APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/488,182	01/20/2000	Eric Jonathan Bauer	13-7-4	4052

7590 04/10/2006	**EXAMINER**
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ART UNIT	PAPER NUMBER
2616	

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DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/488,182	BAUER ET AL.
	Examiner	Art Unit	
	Ronald Abelson	2616	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>2/21/2006</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,4,7 and 10</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1,4,7 and 10</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>15 February 2002</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which

forms the basis for all obviousness rejections set forth in this

Office action:

> (a) A patent may not be obtained though the invention is not identically
> disclosed or described as set forth in section 102 of this title, if the
> differences between the subject matter sought to be patented and the prior
> art are such that the subject matter as a whole would have been obvious at
> the time the invention was made to a person having ordinary skill in the
> art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

2.   This application currently names joint inventors. In

considering patentability of the claims under 35 U.S.C. 103(a),

the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered

therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to

point out the inventor and invention dates of each claim that

was not commonly owned at the time a later invention was made in

order for the examiner to consider the applicability of 35

U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior

art under 35 U.S.C. 103(a).

3.   Claims 1, 4, 7, and 10 are rejected under 35 U.S.C. 103(a)
as being unpatentable over Cruickshank (US 6,389,005), in view
of Fichou (US 5,790,522).

Regarding claims 1, 4, and 10, Cruickshank teaches a method
and apparatus for an overload control method for use in a multi-
branch Internet Protocol (IP) based private exchange (PBX)
system with a network environment having a primary network
((fig. 1 box 42) and at least one alternate network (fig. 1 box
40, 44).

The system comprises maintaining a congestion indicator
status associated with each path in the primary network, the
congestion indicator status indicating whether the path is
congested and based on congestion data from at least one device
that participated in packet telephony communication (fig. 3b box
134, col. 2 lines 32-36).

The system comprises receiving a call set up request from a
source terminal (fig. 3b box 122, col. 2 lines 19-27).

The system comprises determining if a primary path between
the source terminal and destination terminal is congested using
the congestion indicator status (fig. 3b box 136).

The system comprises routing the call using the at least
one alternate network if the primary path between the source

terminal and a destination terminal is congested (fig. 3b box 138).

Regarding claims 4 and 10, in addition to the limitations listed, setting a congestion indicator flag associated with the path if the congestion data indicates that a path associated with the packet telephony communication is congested (fig. 3b box 136 "Y").

Regarding claim 10, in addition to the limitations listed, a memory and processor (fig. 1 box 14, col. 2 lines 32-34).

Regarding claim 7, collecting congestion data associated with a packet telephony communication (fig. 3b box 134) and reporting the congestion data to a centralized server that performs overload control, whereby the centralized server evaluated the congestion data to determine if a path associated with the packet telephony communication is congested (fig. 1 box 14, fig. 3b box 134, col. 2 lines 32-34).

Regarding the limitation determining if the packet telephony communication had a duration that exceeded a predefined threshold, Cruickshank teaches measuring parameters such as packet delay, number of dropped packets, and throughput.

Therefore, a minimum duration is inherent in order to determine these characteristics.

Regarding claims 1, 4, 7, and 10, although Cruickshank teaches a congestion indicator, the reference is silent on setting a timer that will cause the congestion indicator flag to automatically expire after a predefined period of time, wherein the timer expires after a period of time within which the congestion is expected to be alleviated.

Fichou teaches setting a timer that will cause the congestion indicator flag to automatically expire after a predefined period of time, wherein the timer expires after a period of time within which the congestion is expected to be alleviated (T1, T2, timer values too small, transmission of packets will again induce congestion, col. 8 lines 12-21).

Therefore it would have been obvious to one of ordinary skill in the art, to modify the system of Cruickshank by upon detecting congestion on a network ceasing traffic on the congested network for a time period indicated by a congestion indicator timer wherein the time period is of sufficient duration in order to alleviate the expected congestion condition. This modification can be performed in software. This modification would benefit the system by prevented traffic from

being transmitted on an already congested network.

Response to Arguments

4.   Applicant's arguments with respect to claims 1, 4, 7, and

10 have been considered but are moot in view of the new

ground(s) of rejection. The current office action is the result

on an updated search performed by the examiner.

Conclusion

5.   Any inquiry concerning this communication or earlier

communications from the examiner should be directed to Ronald

Abelson whose telephone number is (571) 272-3165. The examiner

can normally be reached on M-F.

If attempts to reach the examiner by telephone are

unsuccessful, the examiner's supervisor, Chi Pham can be reached

on (571) 272-3179. The fax phone number for the organization

where this application or proceeding is assigned is 571-273-

8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronald Abelson
Examiner
Art Unit 2616

* * *

CHI PHAM
SUPERVISORY PATENT EXAMINER
4/6/06